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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

15 CR. 02 (CM) (JLC)

5 JOSE RODRIGUEZ,

6 Defendant.

7 -----x

8 New York, N.Y.

9 June 12, 2015

12:40 p.m.

10 Before:

11 HON. JAMES L. COTT,

12 Magistrate Judge

13
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the

16 Southern District of New York

GINA CASTELLANO

17 Assistant United States Attorney

18 JOSHUA DRATEL

Attorney for Defendant

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(Case called)

MS. CASTELLANO: Good afternoon, your Honor. Gina Castellano for the government. I'm joined by Eli Crozier, an intern with the U.S. Attorney's office.

THE COURT: Good afternoon to both of you.

MR. DRATEL: Good afternoon, your Honor. Joshua Dratel for Mr. Rodriguez who is standing beside me.

THE COURT: Good afternoon to both of you. Let's go off the record for a minute.

(Discussion off record)

THE COURT: Let's go back on the record.

Do we have the paperwork, Dave?

THE DEPUTY CLERK: No.

MR. DRATEL: I have to go through that with him. They just brought him up, your Honor.

THE COURT: You can be seated.

(Pause)

THE COURT: Mr. Rodriguez, I have before me a consent form that you have just signed which says that knowing that you have the right to have your plea taken before a United States district judge. You are nonetheless agreeing to have your plea taken here today in magistrate's court before me, a United States magistrate judge.

Do you understand that?

THE DEFENDANT: Yes, sir.

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1 THE COURT: Did you talk to Mr. Dratel about doing so
2 before you signed the form?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: I will approve the consent.

5 Mr. Rodriguez, the purpose of this proceeding today is
6 to make sure that you understand all of your rights, to decide
7 whether you are pleading guilty of your own free will, and to
8 make sure that you are pleading guilty because you are guilty
9 and not for some other reason.

10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: If at any time you do not understand any
13 of the questions that I have am going to ask of you or if you
14 want to consult with Mr. Dratel, please let me know because it
15 is important that you understand every question before you
16 answer. All right?

17 THE DEFENDANT: All right.

18 THE COURT: Now, before I take your plea, I am going
19 to ask you a series of questions and therefore I need to place
20 you under oath. So, if you please?

21 (Defendant sworn)

22 THE COURT: Do you understand, Mr. Rodriguez, that any
23 statements that you make here today, under oath, may be used
24 against you in a prosecution for perjury or for making false
25 statements if you do not tell the truth?

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1 THE DEFENDANT: Yes.

2 THE COURT: I understand that we need to conduct a
3 waiver of indictment at this time.

4 Mr. Tam?

5 THE DEPUTY CLERK: Yes.

6 Defendant, please rise.

7 You are Jose Rodriguez?

8 THE DEFENDANT: Yes.

9 THE DEPUTY CLERK: Did you sign this waiver of
10 indictment? Did you sign this waiver of indictment?

11 THE DEFENDANT: Yes.

12 THE DEPUTY CLERK: Before you signed it, did you
13 discuss it with your attorney?

14 THE DEFENDANT: Yes.

15 THE DEPUTY CLERK: Do you understand what you are
16 doing?

17 THE DEFENDANT: Yes.

18 THE DEPUTY CLERK: Do you understand you are under no
19 obligation to waive indictment?

20 THE DEFENDANT: Yes.

21 THE DEPUTY CLERK: Do you understand if you do not
22 waive indictment, if the government wants to prosecute you,
23 they would have to present this case to a grand jury which may
24 or may not indict you?

25 THE DEFENDANT: Yes.

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1 THE DEPUTY CLERK: Do you realize that by signing this
2 waiver of indictment you have given up your right to have this
3 case presented to a grand jury?

4 THE DEFENDANT: Yes.

5 THE DEPUTY CLERK: Do you understand what a grand jury
6 is?

7 THE DEFENDANT: Yes.

8 THE DEPUTY CLERK: Have you received a copy of the
9 superseding information?

10 THE DEFENDANT: Yes.

11 THE DEPUTY CLERK: Do you waive its public reading?

12 THE DEFENDANT: Yes.

13 THE DEPUTY CLERK: How do you plead?

14 THE DEFENDANT: Guilty.

15 THE DEPUTY CLERK: Thank you.

16 THE COURT: You may be seated.

17 Mr. Rodriguez, could you please state your full name
18 for the record?

19 THE DEFENDANT: Jose Antonio Rodriguez.

20 THE COURT: How old are you?

21 THE DEFENDANT: 27, sir.

22 THE COURT: Are you a citizen of the United States?

23 THE DEFENDANT: Yes.

24 THE COURT: Are you able to read and write in English?

25 THE DEFENDANT: Yes.

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1 THE COURT: How far did you go in school?

2 THE DEFENDANT: Graduated high school, GED.

3 THE COURT: Are you now or have you recently been
4 under the care of a doctor or psychiatrist for any reason?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you been treated recently for any
7 mental illness or addiction to narcotic drugs of any kind?

8 THE DEFENDANT: No. No, sir.

9 THE COURT: As you sit here today, are you under the
10 influence of any mind-altering drug or any alcoholic drink?

11 THE DEFENDANT: No. No, sir.

12 THE COURT: Are you on any medication?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you feel all right today?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you been able to understand
17 everything that I have said to you so far?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you seen a copy of this information
20 in the case?

21 THE DEFENDANT: Yes.

22 THE COURT: Have you read it?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand what it says that you
25 did?

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1 THE DEFENDANT: Yes.

2 THE COURT: Have you had a chance to discuss the
3 charge in the information and how you wish to plead with
4 Mr. Dratel?

5 THE DEFENDANT: Yes.

6 THE COURT: Are you satisfied with his representation
7 of you?

8 THE DEFENDANT: Yes.

9 THE COURT: Have you had a full opportunity to discuss
10 the case with him?

11 THE DEFENDANT: Yes.

12 THE COURT: Has he discussed with you the consequences
13 of pleading guilty?

14 THE DEFENDANT: Yes.

15 THE COURT: Now, are you ready to enter a plea today?

16 THE DEFENDANT: Yes.

17 THE COURT: My understanding is that you are pleading
18 guilty to Count One of this information. Let me review the
19 charge with you and the penalties associated with that charge.

20 Count One charges you with possessing a firearm in and
21 affecting commerce after having been convicted of a felony in
22 violation of federal law.

23 This charge carries a maximum term of imprisonment of
24 10 years, a maximum term of supervised release of three years,
25 a maximum fine pursuant to federal law of the greatest of

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1 \$250,000, twice the gross gain derived from the offense or
2 twice the gross loss to persons other than you resulting from
3 the offense, and a \$100 mandatory special assessment.

4 Do you understand the charge in Count One of the
5 information and the penalties that are associated with that
6 charge?

7 THE DEFENDANT: Yes.

8 THE COURT: How do you wish to plead to Count One?

9 THE DEFENDANT: Guilty.

10 THE COURT: Do you understand, Mr. Rodriguez, that as
11 part of your sentence if you are placed on a term of supervised
12 release and then you violate any of the conditions of that
13 release, you could face an additional term of imprisonment?

14 THE DEFENDANT: Yes.

15 THE COURT: Now at this time, Mr. Rodriguez, I want to
16 review with you a number of rights that you have and you will
17 be giving up as a result of your guilty plea today.

18 First of all, do you understand that you have the
19 right to plead not guilty to the charge in the information and
20 the right to a speedy and public jury trial, if you wish?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand that if you were to
23 plead not guilty and go to trial, the burden would be on the
24 government to prove your guilt beyond a reasonable doubt and
25 you would be presumed innocent?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you understand that you would be
3 entitled to be represented by an attorney at all stages of the
4 proceedings -- at trial and at every other stage -- and if you
5 could not afford to hire or to retain an attorney, the Court
6 would appoint an attorney for you for free?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that if there were a
9 trial in your case, you would be entitled to confront and
10 cross-examine any of the witnesses the government called to
11 testify against you?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand you would be entitled to
14 testify on your own behalf?

15 THE DEFENDANT: Yes.

16 THE COURT: Do you understand that you could call
17 witnesses and present evidence?

18 THE DEFENDANT: Yes.

19 THE COURT: Do you understand that you could ask the
20 Court to issue subpoenas to compel witnesses to appear and
21 testify in your defense even if they did not otherwise wish to
22 come to court?

23 THE DEFENDANT: Yes.

24 THE COURT: Do you understand that if there were a
25 trial you would not be required to testify against yourself?

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1 THE DEFENDANT: Yes.

2 THE COURT: And, do you understand if you chose not to
3 testify, that fact could not be used against you?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you also understand that if you went to
6 trial and you were convicted at trial, you would still have the
7 right to appeal that conviction to a higher court?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand that by entering a
10 guilty plea here today you will be giving up all of the rights
11 that I have just reviewed with you including your right to a
12 trial? You will not be able to withdraw your plea and the only
13 remaining step in this case will be the sentencing?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that the decision as to
16 the appropriate sentence in your case will be entirely up to
17 the sentencing judge who in this case is Judge McMahon, and she
18 will be limited only by what the law requires?

19 THE DEFENDANT: Yes.

20 THE COURT: Do you understand that even if you are
21 surprised or disappointed by your sentence, you are still going
22 to be bound by your guilty plea?

23 THE DEFENDANT: Yes.

24 THE COURT: Knowing everything that I have just
25 reviewed with you, do you still wish to plead guilty to Count

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1 One of the information?

2 THE DEFENDANT: Yes.

3 THE COURT: Has any force or any threats of force been
4 used, either directly or indirectly, to influence how you plead
5 today?

6 THE DEFENDANT: No.

7 THE COURT: Mr. Rodriguez, I have before me a letter
8 dated June 3rd, 2015 from the government to Mr. Dratel
9 containing the plea agreement in this case. Have you read this
10 letter?

11 THE DEFENDANT: Yes.

12 THE COURT: Did you sign it on the last page?

13 THE DEFENDANT: Yes.

14 THE COURT: Before you signed it, did you discuss it
15 with your attorney?

16 THE DEFENDANT: Yes.

17 THE COURT: Did he explain to you its terms and
18 conditions?

19 THE DEFENDANT: Yes.

20 THE COURT: Apart from what is contained in the
21 letter, have any promises been made to you in order to get you
22 to plead guilty?

23 THE DEFENDANT: No.

24 THE COURT: Now, in reviewing this agreement I note,
25 beginning on page 2, it contains an analysis of how part of our

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1 law of sentencing known as the Sentencing Guidelines may impact
2 on any prison term in your case. Based on that analysis, on
3 page 3 of the letter it states the conclusion is that the
4 guidelines sentencing range can be expected to be from 37 to 46
5 months.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: Do you understand that Judge McMahon is
9 not bound by the calculation in the letter and she will be free
10 to do her own calculation which may result in a guideline range
11 that is different from the one in letter?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you understand that no matter what
14 sentencing range Judge McMahon believes is called for by the
15 guidelines, that range is just one of many factors that she is
16 going to consider in determining your sentence and she has the
17 discretion to give a prison sentence that is below the range or
18 above the range, anywhere up to the maximum sentence of
19 imprisonment that we discussed a few minutes ago?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you also understand that under the
22 terms of your plea agreement, if Judge McMahon sentences you to
23 a prison term that is 46 months or less, you are giving up your
24 right to appeal that sentence or to challenge it in any other
25 way such as through a writ of habeas corpus?

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1 THE DEFENDANT: Yes.

2 THE COURT: Do you also understand that in the letter
3 you are giving up your right to complain if the government
4 withheld any evidence from your attorney that would have been
5 helpful to you?

6 THE DEFENDANT: Yes.

7 THE COURT: Now, Mr. Rodriguez, is your plea
8 voluntary? And what I mean by that, is it made of your own
9 free will?

10 THE DEFENDANT: Yes.

11 THE COURT: Has any threat of any kind been made to
12 influence how you plead today?

13 THE DEFENDANT: No.

14 THE COURT: Did you in fact commit the offense that is
15 charged in Count One of the superseding information?

16 THE DEFENDANT: Yes.

17 THE COURT: Now, before I ask you to tell the Court
18 what you did that makes you guilty of the charge, I am going to
19 ask the government to summarize the elements of the offense
20 and, if it chooses to, to advise the Court what the evidence
21 would have been had there been a trial.

22 Ms. Castellano?

23 MS. CASTELLANO: Yes, your Honor.

24 Count One of the superseding information charges the
25 defendant with possessing a firearm in and affecting commerce

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1 after having been convicted of a felony in violation of
2 Title 18, United States Code, Section 922(g). To prove the
3 defendant guilty of Count One, the government would have to
4 prove each of the following elements beyond a reasonable doubt:

5 First, that the defendant was convicted in any court
6 of a crime punishable by imprisonment for a term exceeding one
7 year; second, that the defendant knowingly possessed a firearm
8 as charged; and third, that the possession charged was in or
9 affecting commerce.

10 The government's proof at trial would include, among
11 other things, the testimony of the officers who recovered the
12 firearm, the firearm itself, the testimony of an ATF agent
13 regarding the firearms, make and model, that it was not made in
14 New York, and the certificate of disposition for the
15 defendant's prior felony conviction.

16 THE COURT: Thank you, Ms. Castellano.

17 Mr. Rodriguez, at this time, if you would please tell
18 me, in your own words, what you did that makes you guilty of
19 the charge in the superseding information?

20 THE DEFENDANT: On December 18th I was in a car with,
21 amongst other individuals where a gun was -- where a gun was in
22 the vehicle and I possessed it.

23 THE COURT: You were in a car on December 18th, 2014
24 and in that car there was a gun and you possessed that gun? Is
25 that what you just said?

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1 THE DEFENDANT: Well, it was in the -- it was in the
2 car.

3 THE COURT: And you were in the car?

4 THE DEFENDANT: Yes.

5 THE COURT: Did you know there was a gun in the car?

6 THE DEFENDANT: Yes.

7 THE COURT: Where did this take place? Somewhere in
8 the Southern District of New York?

9 THE DEFENDANT: Yes; the Bronx.

10 THE COURT: In the Bronx. All right.

11 Ms. Castellano, other questions you want me to ask?

12 MS. CASTELLANO: Your Honor, I think I could just
13 proffer that the defendant was convicted on or about March 12,
14 2010 for criminal sale of a controlled substance in the third
15 degree.

16 THE COURT: Is that correct, Mr. Rodriguez? Were you
17 previously convicted of that crime?

18 THE DEFENDANT: Yes.

19 THE COURT: Anything else?

20 MS. CASTELLANO: That's it, your Honor.

21 THE COURT: Mr. Dratel, any other questions you think
22 I need to ask your client?

23 MR. DRATEL: No, your Honor.

24 THE COURT: All right. Does the government represent
25 that it has sufficient evidence to establish Mr. Rodriguez'

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1 guilt beyond a reasonable doubt?

2 MS. CASTELLANO: No, your Honor -- yes, your Honor.

3 Excuse me.

4 THE COURT: Mr. Dratel, do you know of any defense
5 that would prevail at trial, or any other reason why he
6 shouldn't be permitted to plead guilty at this time?

7 MR. DRATEL: No, your Honor.

8 THE COURT: Any other questions that either counsel
9 believes the Court needs to ask?

10 MS. CASTELLANO: No, your Honor.

11 MR. DRATEL: No, your Honor.

12 THE COURT: On the basis of Mr. Rodriguez' responses
13 to my questions and my observation of his demeanor, I find that
14 he is fully competent to enter an informed plea at this time.
15 I also conclude that he understands the nature of the charges
16 and the consequences of his plea. Finally, I am satisfied that
17 his plea is voluntary and that there is a factual basis for it.

18 Accordingly, I recommend that the proffered plea to
19 Count One of the superseding information be accepted. I assume
20 the government will order a copy of the transcript and submit
21 it to Judge McMahon, together with any additional paperwork she
22 may need in order to act on this recommendation.

23 MS. CASTELLANO: Yes, your Honor.

24 THE COURT: And has she scheduled a sentence in this
25 case?

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1 MS. CASTELLANO: She has not, your Honor. I ask that
2 your Honor set the same control date as set for the defendant's
3 co-defendants -- September 14th, 2015.

4 THE COURT: We will sit that 90 days from now,
5 Mr. Dratel, but I assume you and Ms. Castellano will get a date
6 certain from Judge McMahon in the next few weeks.

7 MR. DRATEL: Yes, your Honor.

8 THE COURT: Ms. Castellano, you should submit the
9 prosecution case summary for purposes of presentence report
10 within the next 14 days.

11 Mr. Dratel, you should make yourself available with
12 your client to probation within the next 14 day, as well.

13 MR. DRATEL: Yes, your Honor.

14 MS. CASTELLANO: Yes, your Honor.

15 THE COURT: Anything else from the government?

16 MS. CASTELLANO: No, your Honor.

17 THE COURT: Mr. Dratel, anything else?

18 MR. DRATEL: No.

19 THE COURT: Mr. Rodriguez, have a good afternoon.

20 THE DEFENDANT: Thank you, sir.

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